Vell Paari a/l Samy Vellu v Dato' Pardip Kumar Kukreja & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S7–22–553 OF 2008
ROSILAH YOP JC
27 FEBRUARY 2013

Companies and Corporation — Director — Liabilities — First defendant director of second defendant attempted to escape liability — Whether any privity of contract between plaintiff and first defendant — Whether first defendant was alter ego of second defendant — Whether plaintiff could bring action against first defendant

Landlord and Tenant — Agreement — Breach of — Collateral and tenancy agreement — Lease of hotel — Plaintiff agreed to reduced rentals because defendants undertook to spend money to renovate and refurbish hotel — Defendants failed to undertake renovation or refurbishment work — Whether defendants breached collateral and tenancy agreement — Whether collateral agreement existed side-by-side the tenancy agreement — Whether tenancy agreement allowed defendants to enter into subtenancy

Tort — Conversion — Claim in conversion — Tenancy agreement — Removal of hotel's belonging — Whether tenancy agreement allowed defendants to remove and take away plaintiff's belonging — Whether plaintiff had proved his case in conversion

The plaintiff was the owner of a property known as Hotel Alamanda in Kuala Terengganu ('the said hotel'). The parties had, sometime in February 2000, verbally agreed, inter alia, that the plaintiff lease the said hotel to the first defendant and/or his company for an amount of RM6,000 per month as rental ('agreement'). The amount of rental was fixed substantially lower than the market value of RM12,000 per month, so as to facilitate the first defendant's undertaking to renovate and refurbish the said hotel, restore and improve the facilities in the said hotel at his own cost. Subsequently, a tenancy agreement was signed on March 2000 ('tenancy agreement') between the plaintiff and the first defendant who purported to act for and on behalf of the second defendant. Under the terms of the tenancy agreement, the second defendant, inter alia, agreed to keep the said hotel including the general premises, the sanitary, electrical fixtures and fittings in good tenantable repair. The tenancy came to an end in April 2007, and the first defendant delivered vacant possession of the said hotel to the plaintiff. During the course of the tenancy, the first defendant

had, without the plaintiff's consent, installed low quality used individual split-unit air conditioners in each of the rooms and proceeded to contra RM55,000 from the rentals. Further, the defendants had failed to keep the said hotel in good tenantable condition causing the plaintiff to incur loss and expense. The first defendant also removed and converted for the defendants' own use, several fittings in the said hotel, causing extensive damage to the building. Besides the above, the defendants failed to renovate and refurbish the said hotel and restore and improve the facilities of the said hotel. The plaintiff contended that the defendants had breached the terms of the agreement and tenancy agreement and had unlawfully interfered with property belonging to the plaintiff. By reason of the aforesaid breach, the plaintiff had suffered losses, damages and expenses. The following issues arose for the determination of this court: (i) whether the defendants were in breach of the terms in the agreement and the tenancy agreement; (ii) whether there was any conversion concerning some items as stated in para 12 of the statement of claim; (iii) whether there was an existence of a collateral agreement or reduced rentals and whether it could be said to exist side-by-side with the tenancy agreement; and (iv) whether there was any privity of contract between the plaintiff and the first defendant.

Held, allowing the plaintiff's claim with costs:

(1) The plaintiff's allegation that there was no renovation or refurbishment work undertaken by the defendants was not challenged by the defendant. This meant that the allegation that the defendants were in breach of the terms in the tenancy agreement and there was a conversion concerning some items as stated in para 12 of the statement of claim could not be disputed at all and that the defendants tacitly accepted the claim to be cogent. Therefore, the defendants were in breach of the agreement and tenancy agreement (see paras 21, 23 & 28).

(2) Not only did the defendants hand back the hotel in a deplorable state, they took away the air conditioner compressor belonging to the plaintiff. This centralised air conditioner belonged to the plaintiff and the defendants had no proprietary right over it. Apart from the above centralised air-conditioner compressor, there were three mini refrigerators and canopy at the entrance of the hotel that were also removed by the defendants and was missing. No terms of the tenancy agreement allowed the defendants to remove and taken away the hotel's belonging. Hence, the plaintiff had proven conversion (see paras 32–34).

(3) The defendants were also in breach of cl 3(a) of the tenancy agreement when they did not pay the plaintiff the monthly rental of RM6,000 per month for the first three years and RM7,000 per month for the subsequent years. Further, the defendants were also in breach of the tenancy agreement by entering into a subtenancy agreement with PW5

which PW5 confirmed, in his evidence. Nowhere in the tenancy agreement was it stated that the defendants could enter into a subtenancy (see paras 36–38).

(4) The agreement was a collateral agreement that existed side-by-side with the tenancy agreement. The plaintiff had agreed to the reduced rentals because the defendants undertook to spend this money to renovate and refurbish the hotel during the 15 year period. Hence, by not undertaking the renovation and refurbishment exercise, defendants had also breached the collateral agreement (see paras 42–43).

(5) The first defendant was the director of the second defendant and the main person who dealt with the plaintiff on behalf of the second defendant. It was therefore not appropriate for the first defendant, who was a director of the second defendant, to attempt to escape liability by saying that the liability was merely between the plaintiff and the second defendant. The first defendant was the alter ego of the second defendant. Hence, there was a privity of contract between the plaintiff and the first defendant. Thus, plaintiff could maintain an action against the first defendant (see paras 48–52).

[Bahasa Malaysia summary

Plaintif adalah pemilik hartanah dikenali sebagai Hotel Alamanda di Kuala Terengganu ('hotel tersebut'). Pihak-pihak telah, pada bulan Februari 2000, secara lisan bersetuju, antara lain, bahawa plaintif akan menyewakan hotel tersebut kepada defendan pertama dan/atau syarikatnya untuk jumlah RM6,000 sebulan sebagai sewa ('perjanjian'). Jumlah sewa itu yang ditetapkan lebih rendah daripada nilai pasaran RM12,000 sebulan, untuk memudahkan janji defendan pertama untuk mengubah suai dan membaik pulih hotel tersebut, memulih dan membaiki kemudahan hotel tersebut dengan kos sendiri. Berikutan itu, perjanjian sewaan telah ditandatangani pada Mac 2000 ('perjanjian sewa') antara plaintif dan defendan pertama yang dikatakan bertindak untuk dan bagi pihak defendan kedua. Di bawah terma perjanjian sewa itu, defendan kedua, antara lain, bersetuju untuk menjaga hotel tersebut termasuk premis am, kebersihan, lekapan dan lengkapannya dalam keadaan yang sentiasa baik. Penyewaan itu berakhir dalam bulan April 2007, dan defendan pertama telah menyerah milikan kosong hotel tersebut kepada plaintif. Sepanjang tempoh penyewaan itu, defendan pertama telah, tanpa persetujuan plaintif, memasang penghawa dingin berkualiti rendah dalam setiap bilik dan telah menolak RM55,000 daripada sewa itu. Selanjutnya, defendan-defendan telah gagal untuk menjaga hotel tersebut dalam keadaan yang sentiasa baik menyebabkan plaintif mengalami kerugian dan perbelanjaan. Defendan pertama juga telah mengalih dan menukar untuk kegunaan defendan-defendan sendiri, beberapa lengkapan dalam hotel tersebut, menyebabkan banyak kerosakan pada bangunan itu. Selain itu, defendan-defendan telah gagal mengubah suai dan membaik pulih hotel

tersebut dan mengekalkan serta memperbaiki kemudahan hotel tersebut. Plaintif berhujah bahawa defendan-defendan telah melanggar terma-terma perjanjian dan perjanjian sewa dan telah menyalahi undang-undang mengganggu hartanah yang dimiliki plaintif. Oleh sebab pelanggaran tersebut, plaintif telah mengalami kerugian, kerosakan dan perbelanjaan. Isu-isu berikut timbul untuk ditentukan oleh mahkamah ini: (i) sama ada defendan-defendan telah melanggar terma-terma dalam perjanjian dan perjanjian sewa itu; (ii) sama ada terdapt apa-apa penukaran berkaitan beberapa item sebagaimana dinyatakan dalam perenggan 12 kepada penyataan tuntutan; (iii) sama ada wujud satu perjanjian kolateral atau sewa yang dikurangkan dan sama ada ia boleh dikatakan wujud bersampingan dengan perjanjian sewaan; dan (iv) sama ada terdapat apa-apa priviti kontrak antara plaintif dan defendan pertama.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Dakwaan plaintif bahawa tiada apa-apa kerja pengubahsuaian atau pembaikpulihan yang dijalankan oleh defendan-defendan tidak dicabar oleh defendan. Ini bermaksud dakwaan bahawa defendan-defendan telah melanggar terma-terma di dalam perjanjian sewaan dan terdapat penukaran berkaitan beberapa butiran sebagaimana dinyatakan dalam perenggan 12 kepada penyataan tuntutan tidak boleh dipertikaikan langsung dan adalah bahawa defendan-defendan secara diam-diam menerima tuntutan menyakinkan. Oleh itu defendan-defendan telah melanggar perjanjian dan perjanjian sewa itu (lihat perenggan 21, 23 & 28).

(2) Defendan-defendan bukan sahaja telah menyerah balik hotel itu dalam keadaan yang buruk, mereka juga telah mengambil kompresor penghawa dingin milik plaintif. Penghawa dingin berpusat ini adalah milik plaintif dan defendan-defendan tiada keempunyaan ke atasnya. Selain daripada kompresor penghawa dingin itu, terdapat tiga peti sejuk kecil dan kanopi di ruang masuk hotel tersebut yang telah dialih oleh defendan-defendan dan telah hilang. Tiada terma dalam perjanjian sewa yang membenarkan defendan-defendan mengalih dan mengambil barang-barang hotel. Justeru, plaintif telah membuktikan pengubahan berlaku (lihat perenggan 32–34).

(3) Defendan-defendan juga telah melanggar fasal 3(a) perjanjian sewa apabila mereka tidak membayar plaintif sewa bulanan RM6,000 setiap bulan selama tiga tahun dan RM7,000 sebulan untuk tahun-tahun berikutnya. Selanjutnya, defendan-defendan juga telah melanggar perjanjian sewa dengan memasuki perjanjian penyewaan kecil dengan PW5 yang mana telah disahkan oleh PW5 dalam keterangannya. Tiada mana-mana dalam perjanjian sewa yang menyatakan bahawa defendan-defendan boleh memasuki penyewaan kecil (lihat perenggan 36–38).

(4) Perjanjian itu adalah perjanjian kolateral yang wujud bersampingan dengan perjanjian sewa. Plaintif telah bersetuju dengan sewa yang dikurangkan itu kerana defendan-defendan mengakujanji untuk membelanjakan wang itu bagi mengubah suai dan membaik pulih hotel tersebut sepanjang tempoh 15 tahun tersebut. Justeru, dengan tidak melaksanakan kerja-kerja pengubahsuaian dan pembaikpulihan itu, defendan-defendan juga telah melanggar perjanjian kolateral tersebut (lihat perenggan 42–43).

(5) Defendan pertama adalah pengarah defendan kedua dan orang utama yang berurusan dengan plaintif bagi pihak defendan kedua. Oleh itu adalah tidak sesuai untuk defendan pertama yang merupakan pengarah defendan kedua untuk cuba mengelakkan liabiliti dengan mengatakan liabiliti itu hanya antara plaintif dan defendan kedua. Defendan pertama merupakan alter ego defendan kedua. Justeru, terdapat priviti kontrak antara plaintif dan defendan pertama. Oleh itu, plaintif boleh mengekalkan tindakan terhadap defendan pertama (lihat perenggan 48–52).]

Notes

For cases on claim in conversion, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 120–121.

For cases on liabilities, see 3(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 320–321.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770; [1995] 3 CLJ 639, CA (refd)

Credit Corp (M) Bhd v Michael Cheong Hoon Lam [1982] CLJ Rep 436, HC (refd)

Lembaga Kumpulan Wang Simpanan Pekerja v Adorna RMIT Sdn Bhd & Ors [2003] 4 MLJ 729; [2003] 1 LNS 482, HC (refd)

Prem Ramachandran (Kumar Partnership) for the plaintiff.

Zainur Zakaria (Zainur Zakaria & Co) for the defendants.

Rosilah Yop JC:

INTRODUCTION

[1] On 16 January 2013, the trial proceeded on the determination on the issue of liability first, and in the event the court finds in favour of the plaintiff,

there shall then be an order that damages be assessed by the registrar.

CASE FOR THE PLAINTIFF

[2] The plaintiff is the owner of a property known as Hotel Alamanda Kuala Terengganu located at No 28 & 28A, Jalan Tok Lam, 20100 Kuala Terengganu ('the said hotel').

[3] There were various meetings between the plaintiff, Mr Gurcharan Singh, the first defendant and his general manager, Mr Sugumaran a/l Rajaram and sometime in February 2000 the following verbal agreement ('the agreement') was reached. The parties had agreed, inter alia:

(a) that the plaintiff would lease the said hotel to the first defendant and/or his company; and

(b) in consideration thereof, the first defendant would pay the plaintiff an amount of rental of RM6,000 per month; and

(c) the amount of rental was substantially lower than the market value of RM12,000 per month, to facilitate the first defendant's undertaking to renovate and refurbish the said hotel and restore and improve the facilities in the said hotel, at his own cost.

[4] To supplement and in performance of the agreement, a tenancy agreement was signed on 16 March 2000 ('the tenancy agreement') between the plaintiff and the first defendant who purported to act for and on behalf of the second defendant. Under the terms of the tenancy agreement, the second defendant, inter alia, agreed to:

(a) keep the said hotel including the general premises and the sanitary and electrical fixtures and fittings in good tenantable repair;

(b) keep the interior of the said hotel, including the flooring material, interior plaster or other surface materials of walls and ceilings all windows and other glass and all shutter locks fastenings, key bells, electrical wiring lights, fittings and fixtures, the property of the owner upon and belonging to the said hotel in good tenantable repair and condition;

(c) undertake at its own costs all alterations as contained in the schedule known as the 'Renovation and Refurbishment Exercise', which schedule was forwarded to the plaintiffs by the first defendant on 3 March 2000; and

(d) pay for all the utilities of the said hotel during the duration of the tenancy.

[5] The tenancy came to an end on 1 April 2007, and the first defendant delivered vacant possession of the said hotel to the plaintiff.

[6] During the course of the tenancy, the defendants proposed that an amount of RM55,000 be set off from the rentals due to the plaintiff for the costs of replacing or repairing the centralised air-conditioning unit in the said hotel which was faulty.

[7] Without the plaintiff's consent, the first defendant then installed low quality used individual split-unit air conditioners in each of the rooms and proceeded to contra RM55,000 from the rentals.

[8] The defendants failed to keep the said hotel in good tenantable condition causing the plaintiff to incur loss and expense. The first defendant also removed and converted for the defendants' own use, several fittings in the said hotel, causing extensive damage to the building.

[9] Further, the defendants failed to renovate and refurbish the said hotel and restore and improve the facilities of the said hotel.

[10] In the premise the plaintiff contends that the defendant's have breached the terms of the agreement and tenancy agreement and have unlawfully interfered with property belonging to the plaintiff.

[11] By reason of the aforesaid breach, the plaintiff has suffered losses, damages and expenses.

CASE FOR THE DEFENDANT

[12] The defendants agreed that there were various meetings held in February 2000. The defendants stated that if there was any agreement reached it was between the plaintiff and the second defendant.

[13] At all material time the first defendant had acted in his capacity as a director or agent on behalf of the second defendant.

[14] The defendants agreed that the tenancy commenced on 1 June 2000. The vacant possession of the hotel was delivered to the second defendant and not the first defendant.

[15] The defendants in the defence had agreed to the fact that the split unit air conditioners were installed in the said hotel and the sum of RM55,000 was deducted from the rental of the said hotel.

[16] The installation was done by the second defendant with the consent of the plaintiff and denied that the air conditioners were of low quality.

[17] On 1 April 2007, the vacant possession of the said hotel was given by the second defendant to the plaintiff.

[18] The plaintiff did not complain verbal or otherwise as to the condition of the said hotel when the vacant possession was delivered to the plaintiff. The defendants contend that the complaints by the plaintiff on the purported deplorable state at the hotel are afterthought.

THE FINDINGS OF THE COURT

[19] Both parties have filed separate statement of issues to be tried. Those documents are marked as H and I. They have formulated several issues but the real issues for determination to my mind are:

(a) whether the defendants were in breach of the terms in the agreement and the tenancy agreement;

(b) whether there was any conversion concerning some items as stated in para 12 of the statement of claim;

(c) whether there was an existence of a collateral agreement or reduced rentals and whether it can be said to exist side-by-side with the tenancy agreement; and

(d) whether there is any privity of contract between the plaintiff and the first defendant.

Issue (a) and (b)

[20] PW5 testified that he was employed by the second defendant as a general manager in August 1999. He was responsible for managing the said hotel from August 1999–2007.

[21] PW5 confirmed that there was no renovation or refurbishment work undertaken by the defendants from 2000–2007. During the cross-examination of SD1, he was referred to the plaintiff's letter dated 14 June 2007 at pp 15–16 of bundle B.

[22] The said letter read as follows:

> … it was clearly agreed between the 2 parties that the lower amount of monthly lease rental of RM6000.00 is charged instead of the normal marker price of RM12,000.00 on the understanding that D1 undertake to upgrade the said hotel at your own cost (refer to the list of work agreed at the time of the lease). We find that you failed to carry out any of the work naturally agreed upon.
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> …
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> …
>
> … your failure to do regular maintenance/rectification works to the roof had rendered the roof to leak has resulted in water sipping into all the rooms and has caused extensive damage to the ceiling of almost all the rooms
>
> …
>
> …
>
> upon taking possession of the hotel back from you, we find that the kitchen is not in tenantable condition. You have left the kitchen unused which has resulted in all equipments to deteriorate …

[23] All these evidence were not challenged by the defendants. Hence it remains unrebutted. This part of the plaintiff's letter dated 14 June 2007; the evidence was not challenged at all in cross-examination. In the absence of evidence that the claim is inaccurate or that the content of the said letter is untrue this means that the allegation that the defendants were not in breach of the terms in the tenancy agreement dated 16 March 2000 and there was a conversion concerning some items as stated in para 12 of the statement of claim could not be disputed at all and that the defendants tacitly accept the claim to be cogent — see *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770; [1995] 3 CLJ 639 (CA).

[24] PW5 confirmed that for the seven years of tenancy agreement, the defendants did not do any renovation or refurbishment work. Clause 5(f) of the tenancy agreement provided as follows:

> (f) The Tenant shall undertake at his own cost all and any kind of alterations as contained in the 'Renovation and Refurbishment Exercise' to the demised premises. In the event that the tenancy is terminated for whatever reasons during the first five years, then the Owner shall reimburse the Tenant that total cost as laid out in the Renovation and Refurbishment Exercise.

[25] Tenancy agreement is the agreed document. It is the obligation of the defendants to renovate and refurbish the said hotel.

[26] It was in evidence that there was a 'list' setting out the works to be undertaken in renovation and refurbishment exercise was not produced. This

'list' of works to be done only goes to establish the extent of works that needed to be undertaken. This is relevant to quantum and not liability. The defendants did not dispute the existence of the 'list' in his letter dated 20 June 2007 at p 4 of bundle C.

[27] The facts remain that the defendants was obliged under cl 5(f) to undertake a renovation and refurbishment exercise.

[28] The documentary and oral evidence on this issue are clear. There were no documents produced by the defendants to prove that any renovation or refurbishment works were carried out. This they did not do, therefore the defendants are in breach of the agreement and tenancy agreement.

[29] The tenancy came to an end on 1 April 2007, when the first defendant caused vacant possession to be returned to the plaintiff. Upon the accepting vacant possession and inspecting the said hotel, the plaintiff was shocked and dismayed by the deplorable and depleted state in which the said hotel had been left. This evidence comes from SP5 who was the general manager of the second defendant at the material time. His evidence was challenged by the defendants; however his testimonies remained consistent and are not shaken.

CONVERSION

[30] The law of conversion requires the fulfillment of any of the following:

(i) when property is wrongly taken or parted with.

(ii) when property is wrongfully sold in market overt although not delivered.

(iii) when property is wrongfully retained.

(iv) when property is wrongfully destroyed or changed in nature.

(See *Clerk & Lindsell on Torts* (12th Ed).)

[31] In *Credit Corp (M) Bhd v Michael Cheong Hoon Lam,* [1982] CLJ Rep 436, Hashim Yeop Sani; J said:

> In a claim for conversion it is not necessary for the claimant to prove that the defendant intends to question or deny the plaintiff's rights. It is enough that the defendant's conduct is inconsistent with those rights. Thus anyone who deals with goods in a manner inconsistent with the right of the true owner is guilty of wrongful conversion provided there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith.

[32] Not only did the defendants, hand back the hotel in a deplorable state,

they took away the air conditioner compressor belonging to the plaintiff. PW5 confirmed this in his evidence. In cross-examination PW5 testified, he was at the hotel and was there when the air conditioner compressor was removed and taken away by the defendants without the plaintiff's consent.

[33] SD1 evidence on this issue was completely evasive and self-contradictory. I have also observed the demeanor of SD1 when he gave evidence. He was evasive, I have to warn him to give a truthful answer and self-contradictory in giving evidence. He does not appear to be a truthful witness. SD1 was dishonest with his evidence on this issue concerning the removal and taken away the centralised air conditioning compressor, SD1 never informed the plaintiff about this conversion. This centralised air conditioner belonged to the plaintiff. The defendants had no proprietary right over it. Hence, the plaintiff's claim in conversion has been proved.

[34] A part from this centralised air-conditioner compressor, these were three mini refrigerators and canopy at the entrance of the hotel were also removed by the defendants and was missing. The evidence of PW5 on this issue is very clear and was corroborated by the evidence of PW1 and PW4. No terms of the tenancy agreement allow the defendants to remove and taken away the hotel's belonging.

[35] It is obvious from the evidence so far available that the defendants had without authority taken possession of the plaintiff's property with the intention of asserting a right over it. I therefore hold that the plaintiff have proved his case in conversion.

[36] The defendants are also in breach of cl 3(a) of the tenancy agreement when they did not pay the plaintiff. Monthly rental of RM6,000 per month for the first third years and RM7,000 per month for the subsequent years.

[37] The defendants were also in breach of the tenancy agreement by entering into a subtenancy agreement with PW5. PW5 confirmed this is his evidence. Nowhere in the tenancy agreement was it stated that the defendants can enter into a subtenancy.

[38] Having evaluate and enumerated the above evidence, I am of the view that the defendants were in breach of the tenancy agreement and are guilty of conversion.

Issue (c)

[39] It is the plaintiff's case that the only reason he rented out the hotel to the

defendants at RM6,000 per month because the defendants promise to undertake the renovation and refurbishment exercise.

[40] Pursuant to the agreement the parties had agreed that the amount of rental was substantially lower than the market value of RM12,000 per month, to facilitate the first defendant's undertaking to renovate and refurbish the said hotel and restore and improve the facilities in the said hotel, at his own cost.

[41] PW1, PW4 and PW5 all confirmed that this was the reason for the reduced rental of RM6,000.

[42] The agreement was the collateral agreement which exists side by side with the tenancy agreement. Hence, by not undertaking the renovation and refurbishment exercise defendants have also breached this collateral agreement.

[43] The plaintiff had agreed to the reduced rentals because the defendants undertook to spend this money to renovate and refurbish the hotel during the 15 years period. PW4 evidence was challenged on this issue but the evidence remains unshaken.

[44] The evidence of PW4 on the existence of the collateral agreement is as follows:

> Q7: Do you have personal knowledge of the present dispute between the Plaintiff and the Defendants?
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> A7: Yes, I was present at the meeting in February 2000 which led to the signing of the Tenancy Agreement and I was also present when possession of the hotel taken by the First Defendant in 2000 and thereafter returned to the Plaintiff in 2007.
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> Q9: What was discussed in the meeting?
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> A9: As I recall, the First Defendant wanted to rent to the hotel. Certain broad terms were discussed and it was ultimately agreed between the Plaintiff and the First Defendant that the First Defendant would rent the hotel through his company, namely, the Second Defendant at a 50% reduced rental rate initially fixed at RM6,000.00 per month.
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> Q10: Why was the rental fixed at a reduced rate?
>
> A10: The First Defendant wanted a long term tenancy. Since it was a long term tenancy, the First Defendant said that he was prepared to upgrade, renovate, refurbish and improve the hotel. To do this, the First Defendant said he needed to inject quite a large amount of money. If I recall it was in the region of RM1 million. Consequently, the First Defendant suggested that the monthly rental be fixed at 50% of the then market rate.
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> Q11: Did the Plaintiff agree to the First Defendant's suggestion?

A11: Yes.

[45] This court accepted the evidence of the PW1, PW4 and PW5 as opposed to the evidence of SD1 on the existence of the collateral agreement.

Issue (d)

[46] SD1 in his evidence confirmed that he was the only person that dealt with the tenancy agreement. SD1 is the main person who dealt with all the dealings between the plaintiff and the defendants.

[47] PW5 also confirmed in his evidence in answer no 6 in his witness statement that 'all decisions concerning management, finance and employment were ultimately made by the first defendant and I merely implemented his instruction'. PW5 further confirmed in his evidence that he took all instructions concerning the second defendant from SD1 during his employment as the general manager of the second defendant.

[48] The plaintiff had adduced sufficient evidence on the balance of probabilities that the first defendant who is the director of the second defendant and the main person who dealt with the plaintiff on behalf of the second defendant.

[49] In *Lembaga Kumpulan Wang Simpanan Pekerja v Adorna RMIT Sdn Bhd & Ors* [2003] 4 MLJ 729; [2003] 1 LNS 482, the court had this to say:

> Directors are alter ego of a company.

[50] It is therefore not appropriate for the first defendant who is a director of the second defendant attempt to escape liability by saying that the liability was merely between the plaintiff and the second defendant.

[51] The court will look into the fact that once a person is appointed as a director of a company, under the law he is deemed to have understood his duties and agreed to discharge his duties. If he chose to adopt an attitude of not to bear the liability of the company, in the eyes of the law, he could not be relieved from his liability.

[52] The first defendant was the alter ego of the second defendant. Hence there was a privity of contract between the plaintiff and the first defendant and plaintiff can bring action against the first defendant.

CONCLUSION

[53] Based on the reasons stated above, I am satisfied that the plaintiff had

established its claim on liability against the defendants on the balance of probabilities and hence the judgment be entered in favour of the plaintiff as prayed. Prayer (c) and the general damages to be assessed before the registrar. Interest at 5%pa from today until realisation. The total costs to be submitted before the registrar during the assessment of damages.

Plaintiff's claim allowed with costs.

Reported by Ashgar Ali Ali Mohamed